

OCT - 5 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
GTE Telephone Operating Companies)	CC Docket No. 98-79
GTOC Tariff F.C.C. No. 1)	
GTOC Transmittal No. 1148)	
)	
Pacific Bell Telephone Company)	CC Docket No. 98-103
Pacific Bell Tariff F.C.C. No. 128)	
Pacific Bell Transmittal No. 1986)	

**PACIFIC BELL'S OPPOSITION TO
APPLICATION FOR REVIEW**

Pacific Bell ("Pacific") files this Opposition to the Application for Review filed by AT&T Corporation ("AT&T") with respect to designation orders on Pacific's and GTE's Asymmetrical Digital Subscriber Line ("ADSL") services.¹ The Commission should deny AT&T's Application in its entirety.

Pacific is unclear exactly what improper action AT&T is claiming that the Common Carrier Bureau ("Bureau") took with respect to Pacific's tariff investigation. Although the Bureau set forth two issues in Pacific's designation order, it did not foreclose additional designation orders on additional issues raised against Pacific's tariff. In fact, the Bureau has simply followed its common practice of grouping issues into broad subject matters and issuing separate orders to address each subject matter. There is nothing unlawful or arbitrary about the use of that practice to address the jurisdictional questions raised against the Pacific's and GTE's ADSL tariffs.

¹ Order Designating Issues for Investigation, DA 98-1772, CC Docket No. 98-103 (Com. Car. Bur., rel. September 2, 1998); Order Designating Issues for Investigation, DA 98-1667, CC Docket No. 98-79 (Com. Car. Bur., rel. August 20, 1998).

AT&T thus seems to be presuming that the Bureau will fail to investigate other issues it determines to be legitimate even though AT&T acknowledges that the Bureau has "adequate time . . . to undertake a more detailed review." Application, p. 5 n.11. The Commission should decline to issue what amounts to a mandamus order based upon an anticipatory violation by the Bureau of its delegated authority. Pacific believes that the Bureau is entitled to the presumption that its future actions will be lawful.

The Bureau also correctly addressed the issues surrounding sections 251/252 issues and the FCC's expanded interconnection rules. AT&T Application, p. 4. Those issues are both irrelevant to the tariff review process and are addressed or being addressed elsewhere. The purpose of a tariff investigation is to judge the lawfulness of the tariff filed with the Commission, not to address extraneous matters such as the possible effects on a carrier's obligations outside of the tariffed offering. Access to xDSL-capable loops, non-discriminatory access to relevant operations support systems, the application of wholesale discounts, and expanded interconnection to ADSL have nothing to do with whether the ADSL tariffs filed by Pacific and GTE are lawful. The Commission should reject the attempt to bloat the tariffing process into a "potpourri" proceeding where any issue may be raised, and the conclusion of the investigation delayed.

In any event, as the Bureau properly determined, those extraneous issues have been or are being addressed in other proceedings, most notably the pending advanced services proceeding.²

² Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corp. for Relief from Barriers to Deployment of Advanced Telecommunications Services, Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced* (continued...)

There is nothing abusive here about relying on those proceedings as appropriate forums for any needed resolutions, and that there is no need to duplicate them or their conclusions in the tariffing process as well. Nor is there any basis, as AT&T appears to suggest, for the Commission to circumvent the negotiation/arbitration structure crafted by Congress in sections 251 and 252 process to dictate specific results. The Commission either has or is expected to address the section 251/252 implications on ADSL in the advanced services proceeding; from there, it is entirely appropriate to permit the negotiation/arbitration process to work. Similarly, it was also appropriate for the Bureau to note the possible consequences for a possible future failure to comply with existing Commission rules on expanded interconnection. In sum, AT&T failed to explain how the Bureau has acted unlawfully in relying on other proceedings for the resolution of issues addressed or currently being addressed therein, or in relying on the possibility of other proceedings should a carrier be alleged to have violated a Commission rule, especially where there is currently no such allegation.

²(...continued)


Telecommunications Services, Petition of Ameritech Corp. to Remove Barriers to Investment in Advanced Telecommunications Technology, Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, Petition of the Ass'n for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91; CCB/CPD No. 98-15 RM 9244 (rel. August 7, 1998)

For premises considered, the Commission should reject AT&T's Application in its entirety.

Respectfully submitted,

PACIFIC BELL

By:



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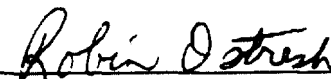
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CERTIFICATE OF SERVICE

I, Robin Ostresh, hereby certify that the foregoing, "PACIFIC BELL'S
OPPOSITION TO APPLICATION FOR REVIEW," in CC Docket Nos. 98-79 and
98-103 has been filed this 5th day of October, 1998 to the Parties on the attached service
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